

17-3621

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LOUIS FLORES,

Appellant-Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Respondent-Defendant.

RECEIVED

2010 JAN 29 AM 9:41

COURT'S OFFICE
COURT OF APPEALS
U.S. DISTRICT COURT
U.S. DISTRICT COURT

BRIEF OF APPELLANT LOUIS FLORES

Louis Flores
34-21 77th Street, Apt. 406
Jackson Heights, New York 11372
Phone : (929) 279-2292
louisflores@louisflores.com

I. TABLE OF CONTENTS

Table Of Contents	2
Table Of Authorities	3
Statement Of Subject Matter And Appellate Jurisdiction	5
Statement Of The Issues Presented For Review.....	6
Statement Of The Case	6
Statement Of The Facts	7
Summary Of The Argument	9
Argument	11
Conclusion	24
Certificate Of Compliance	25
Certificate of Service	26

II. TABLE OF AUTHORITIES

Cases

<i>Liljeberg v. Health Services Acquisition Corp.</i> , 486 U.S. 847, 860 (1988)	20
<i>Liteky v. U.S.</i> , 510 U.S. 540, 548 (1994)	20
<i>Nat'l Ass'n of Home Builders v. Norton</i> , 309 F.3d 26, 32 (D.C. Cir. 2002) ...	17
<i>NLRB v. Robbins Tire & Rubber Co.</i> , 437 U.S. 214, 242 (1978).....	16
<i>Preston v. U.S.</i> , 923 F.2d 731, 734 (9th Cir. 1991)	21
<i>Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n</i> , 533 F.3d 810, 813 (D.C. Cir. 2008)	17
<i>Snyder v. Massachusetts</i> , 291 U.S. 97, 105 (1934)	12
<i>U.S. v. Holland</i> , 519 F.3d 909, 913 (9th Cir. 2008)	21

Statutes

28 U.S.C. § 1291	5
28 U.S.C. § 1331	5
28 U.S.C. § 455(a)	10, 20
28 U.S.C. § 455(b)(1)	10, 21

5 U.S.C. § 552.....5

5 U.S.C. §§ 701-7065

Rules

CODE OF CONDUCT FOR U.S. JUDGES C. 2(A) (2014)23

RULES OF PROF'L CONDUCT R. 3.4(a)(1), (4-5) (2017)15

III. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The District Court had jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii) ; 28 U.S.C. § 1331 ; and 5 U.S.C. §§ 701-706. The District Court (Koeltl, J.) made prejudicial statements during the Initial Conference of the Parties on 13 April 2017. Louis Flores (the "Appellant") filed a request on 09 August 2017 with the District Court (McMahon, J.), requesting a reassignment of the District Court case (the "Request for Reassignment"). (Dkt. No. 25). The Request for Reassignment was never answered. Appellant filed another request on 04 October 2017 to the District Court (McMahon, J. and Koeltl, J.), requesting an adjournment of proceedings to allow Appellant to file a Notice of Appeal (the "Request for Adjournment"). (Dkt. No. 27). Rather than address Appellant's Request for Reassignment, the District Court (Koeltl, J.) issued an Order dated 19 October 2017 and filed on 20 October 2017, denying Appellant's Request for Reassignment based on Appellant's Request for Adjournment. (Dkt. No. 30). Appellant timely filed a Notice of Appeal from that Order on 30 October 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

IV. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1/. May a District Court judge rely on bias as an exemption to the release of records sought under the Freedom of Information Act ("FOIA") ?

2/. May a District Court judge express statements of bias and prejudice against a *pro se* Appellant appearing *in forma pauperis* ?

3/. May a District Court judge engage in misconduct to cover-up bias and prejudice against a party ?

4/. Do officers of the Courts, namely, the Chief U.S. District Court Judge and lawyers in the U.S. Attorney's Office, owe an obligation to ensure that : (i). no U.S. District Court Judge engages in judicial misconduct (ii). to cover up bias and prejudice against a party ?

V. STATEMENT OF THE CASE

This appeal raises significant questions surrounding the right to due process in judicial proceedings. Appellant is litigating under FOIA the release of speech records of former U.S. Attorney **PREET BHARARA** (the "Speech Records"). Appellant is litigating the release of the Speech Records, because the **U.S. DEPARTMENT OF JUSTICE**, the Agency which controls the Speech Records (the "Agency", the "DOJ," or the

"Government"), neither answered the request made under FOIA (the "FOIA Request") nor the administrative appeal filed under FOIA (the "FOIA Appeal"). Appellant launched an activism campaign to run parallel to the District Court case to compel the release of the records. Specifically, Appellant protested outside the U.S. Attorney's Office and outside this Court. Additionally, Appellant went on a liquids-only fast, which Appellant broke on the twenty-second day, to protest the Agency's pattern and practise of violating FOIA. Daily videos made by Appellant during the liquids-only fast can be viewed on a dedicated YouTube channel, and Appellant published a video on the last day of the fast.^{1/} This appeal is about the proceedings before the District Court and, specifically, alleged misconduct by the District Court Judge and violations of ethical obligations by officers of the Court, namely, the Chief U.S. District Court Judge and the Government's counsel.

VI. STATEMENT OF THE FACTS

At the Initial Conference between the Parties in *Flores v. DOJ* (17-CV-0036), U.S. District Court Judge **JOHN KOELTL**, chastised the *pro se* Appellant, who is appearing *in forma pauperis*, for seeking to compel the

^{1/} See Louis Flores, #Fast4FOIA - Day 22, YouTube (20 Mar 2017), <https://youtu.be/OsqnnX9U4a4>.

Agency to comply with FOIA, stating, if the Transcript of the Initial Conference is to be believed, in relevant part, that, "It's not a play. It's not a theatrical production." *See* Hr'g Tr. 3:16-7, 13 Apr 2017. Furthemore, according to Appellant's recollection, about which Appellant has written in a news article, the District Court Judge stated that protecting the reputation of the U.S. Attorney's Office would be one of the factors that would determine whether the Court would compel the Agency to release records sought under the FOIA Request.^{2/} *See also* Appellant Aff. ¶ 1. Furthermore, at the Initial Conference, Appellant requested the right to file documents via ECF. *Supra* at 8:23-9:5. The District Court Judge promised to grant Appellant's request. *Supra* at 9:14-5. The District Court Judge later forced Appellant to apply to be able to file records via ECF. (Dkt. No. 29). The District Court Judge later denied Appellant's

^{2/} *See Louis Flores, As Bharara questions DC integrity, U.S. Attorney's Office undermines FOIA by withholding records of Bharara's speeches, Progress Queens* (14 June 2017), <http://www.progressqueens.com/news/2017/6/11/as-bharara-questions-dc-integrity-us-attorneys-office-undermines-foia-to-withhold-records-of-his-speeches> (noting that, "During an Initial Conference of the parties before U.S. District Court Judge John Koeltl, the Hon. Judge Koeltl said that protecting the reputation of the U.S. Attorney's Office would be a consideration in determining whether the requested records would be released to the publisher of Progress Queens, calling into question whether there is information in the requested records that Federal authorities want to keep secret.")

application to be able to file records via ECF. (Dkt. No. 31). These are actions and statements that are prejudicial to Appellant. These actions appear retaliatory, since the District Court Judge's actions to deny Appellant's application to file records via ECF were made after Appellant announced his intention to appeal the Order.

After Appellant's Request for Reassignment was denied by an Order issued by the District Court Judge Himself, Appellant filed the Notice to Appeal. When the Court reporter produced a Transcript of the Preliminary Conference, the prejudicial remarks of the District Court Judge had been scrubbed from, or misrepresented in, the Transcript. Appellant Aff. ¶ 8. The Court reporters' office informed Appellant that the District Court Judge has discretion over the Transcript. Appellant Aff. ¶ 13. Not only has the District Court Judge made prejudicial statements that violate Appellant's due process rights to a fair Court proceeding, but the District Court Judge's chambers have not responded to requests to correct the Transcript of the Preliminary Conference that would show the judge's prejudice. Appellant Aff. ¶ 11. These acts constitute misconduct.

VII. SUMMARY OF THE ARGUMENT

The District Court Judge has made statements during proceedings that reasonably indicate that His Honour is biased against Appellant.

Appellant Aff. ¶ 1. Appellant filed a Request for Reassignment. (Dkt. No. 25). Appellant's request was ignored. Appellant Aff. ¶ 5. At the Pre-Trial Conference of the Parties, had on 19 October 2017, Appellant requested that the District Court address Appellant's Request for Reassignment. *See* Hr'g Tr. 3:23-4:20, 19 Oct 2017. The District Court Judge announced his intent to deny Appellant's Request for Reassignment. *Supra* at 5:7-10. Appellant announced that he would appeal that intent. *Supra* at 6:24-7:1.

When the Court reporter produced a Transcript of the Preliminary Conference that did not reflect the District Court Judge's prejudicial statement, Appellant made efforts to seek that the Transcript of the Preliminary Conference was corrected. Appellant Aff. ¶ 9. However, the District Court Judge's chambers did not respond to a request to "correct" the Transcript of the Initial Conference to show that the District Court Judge made prejudicial statements. Appellant Aff. ¶ 11. Pursuant to 28 U.S.C. § 455(a) and 28 U.S.C. § 455(b)(1), Appellant respectfully moves for the District Court Judge to be recuse Himself from participating in this proceeding.

VIII. ARGUMENT

A. THE PREJUDICIAL STATEMENTS VIOLATE APPELLANT'S DUE PROCESS RIGHTS

The District Court Judge has done more than express belittling comments ("It's not a play. It's not a theatrical production.") and flip-flop on granting Appellant the ability to file documents using ECF. The District Court Judge has expressed prejudicial statements that indicate he has a bias against Appellant receiving all of the records responsive to the FOIA Request. At the Preliminary Conference, Appellant complained about the Agency's pattern and practise of violating FOIA. "[I]t's been my experience that the D[O]J engages in misconduct because, but for the commencement of litigation, the D[O]J does not comply with FOIA." *See* Hr'g Tr. 6:3-5, 19 Oct 2017. In response, the District Court Judge said that the reputation of the U.S. Attorney's Office was an important consideration. Appellant Aff. ¶ 1. The District Court Judge has stated he will not follow FOIA to determine whether records would be released ; rather, it would be the District Court Judge's bias that would determine whether records would be released. The statements were made after a Court officer called the Court into session, during which time the Court's business was conducted in open Court. Appellant Aff. ¶ 2. At

no time when the prejudicial statements were made was there a side bar or a conversation had outside of the presence of the Government's counsel block the release of records of a former U.S. Attorney. *Supra*. Defendant DOJ is represented by Assistant U.S. Attorney **REBECCA TINIO** of the U.S. Attorney's Office for the Southern District of New York. *Supra*. The Court was attended by other Court employees and other Parties on the Docket for that day's proceedings. *Supra*.

The Supreme Court ruled that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). The District Court Judge's prejudicial statements violate Appellant's rights to due process in judicial proceedings, because what should determine the outcome of the proceedings is FOIA and not the District Court Judge's bias. The District Court Judge must recuse Himself.

B. THE DISTRICT COURT JUDGE ENGAGED IN MISCONDUCT, INCLUDING TO COVER-UP THE PREJUDICIAL STATEMENTS

On 31 October 2017, Appellant called the Court reporters' hotline number and asked for advice on how the Transcript could be corrected of information that did not accurately portray statements made

by the District Court Judge. Appellant Aff. ¶ 12. The Court reporters' office referred Appellant to a particular Court reporter, and Appellant was instructed to send an e-mail request to : csiwik@sdreporters.com. Appellant Aff. ¶ 14. There was no procedure that would allow the Transcript to be conformed with any electronic recording or punch card tape without the District Court Judge's involvement. Appellant Aff. ¶ 15. Because Appellant sought to replace the District Court Judge due to His Honour's making of prejudicial statements, the District Court Judge has a conflict of interest -- His Honour is protecting His Honour's own reputation at the same time His Honour is again violating Appellant's due process rights to a fair Court proceeding.

For example, on 19 October 2017, Appellant left a message for Don Fletcher, the courtroom case manager for the District Court Judge, requesting audio files of the proceedings of the Preliminary Conference. Appellant Aff. ¶ 11. The Judge's chambers never answered this request. *Supra*. At the Pre Trial Conference, which took place on 19 October 2017, the Hon. Judge Koeltl stated that the conference had been called, because Government's counsel requested the hearing to request a briefing schedule. *See Hr'g Tr. 3:23-4:20, 19 Oct 2017*. Appellant was never

copied on such a request, indicating that the Court was having *ex parte* communication with Government's counsel. Appellant Aff. ¶ 18.

Any communication that took place between (x) the Agency, the Court, and the District Court Judge's chambers and (y) the Court reporters' office took place outside the presence of Appellant. Appellant Aff. ¶ 7. The Court reporters' office is : Southern District Reporters, P.C. *Supra*. When Appellant attempted to "correct the record" in the Transcript of the Preliminary Conference, Appellant was informed by the Court reporters' office that the District Court Judge had discretion over the Transcript and that any changes sought by Appellant would need to be made by the Court. Appellant Aff. ¶ 13. Because Appellant has sought to appeal an Order denying Appellant's motion seeking leave to disqualify the District Court Judge over His Honour's prejudicial statements, the District Court Judge is in a position to not only deny Appellant's motion (as His Honour so did), but to block any effort to "correct the record" of the Transcript. By blocking any correction to the Transcript, the District Court Judge is essentially forcing the District Court to knowingly using false Transcript. Furthermore, the District Court Judge is participating in the creation or preservation of false documents. This represents a conflict of interest, is a misuse of official powers and

authorities, and constitutes misconduct. The District Court Judge must recuse Himself.

C. OFFICERS OF THE COURT SANCTIONED THE JUDICIAL MISCONDUCT

Appellant sought intervention from Chief U.S. District Court Judge **COLLEEN MCMAHON** three times. (Dkt. Nos. 25, 27, 38) Never once did the Chief U.S. District Court Judge answer the entreaties. As an attorney registered in New York State, the Chief U.S. District Court Judge is bound by the New York State Unified Court System ethics rules, namely, in part, to have obligations to an opposing party that prohibit the suppression of evidence that the lawyer is obligated to reveal, knowingly using false evidence, and participating in the creation or preservation of false evidence. RULES OF PROF'L CONDUCT R. 3.4(a)(1), (4-5) (2017). By permitting the District Court Judge to continue to oversee the proceedings over the protestations of Appellant, the Chief U.S. District Court Judge sanctioned the District Court Judge's misconduct and may have violated Her Honour's professional obligations under ethics rules.

Assistant U.S. Attorney Tinio is registered to practise law in New York State. Attorneys are officers of the Courts. Similar to the Chief U.S. District Court Judge, Government's counsel is bound by the New York State Unified Court System ethics rules, namely, in part, to have

obligations to an opposing party that prohibit the suppression of evidence that the lawyer is obligated to reveal, knowingly using false evidence, and participating in the creation or preservation of false evidence. *Supra*. As the Government's counsel, she was present at all relevant times during the proceedings of the Preliminary Conference. By permitting the District Court Judge to continue to oversee the proceedings over the protestations of Appellant at the same time when the District Court Judge refuses to "correct the record" of the Transcript, Assistant U.S. Attorney Tinio has sanctioned the District Court Judge's misconduct and may have violated her professional obligations under ethics rules.

D. DISQUALIFICATION IS REQUIRED BECAUSE JUDGE KOELTL'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED

1. The District Court Judge's Misconduct Have Wrongly Allowed The Government To Violate FOIA

Congress enacted FOIA to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). "Although Congress enumerated nine exemptions from the disclosure requirement, 'these limited exemptions do not obscure the basic policy

that disclosure, not secrecy, is the dominant objective of the Act.' " *Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 813 (D.C. Cir. 2008) (quoting *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002)). "Accordingly, FOIA's exemptions are to be narrowly construed." *Id.* Basing the release of records on protecting the reputation of the Agency, or an office of the Agency, is not a permitted exemption under FOIA, and this Court cannot allow the District Court Judge's misconduct to permit the Government to violate FOIA.

2. Even if it Becomes Impossible for Appellant to Prove That the District Court Judge Made Prejudicial Statements That Are Disqualifiable, the District Court Judge Execused Away the Government's Pattern and Practise of Violating FOIA, and That is Disqualifiable, Too

At the Preliminary Conference, Appellant complained about the Agency's pattern and practise of violating FOIA. *See Hr'g Tr. 6:3-7, 13 Apr 2017.* In response, the District Court Judge defended the U.S. Attorney's Office, which is representing the Agency. "My experience with the U.S. Attorney's Office is that certainly the U.S. Attorney's Office for this district has a good history of complying with FOIA and making documents available. Their clients may, as you point out, need some prodding." *Id.* at 6:25-7:4. Again, the reputation of the Agency or the U.S. Attorney's Office should not be any consideration as to

whether a complete release of records is made that is answerable under the FOIA Request. More than that, the Agency has a reputation for violating FOIA. As noted in the Complaint, the Agency was the top Defendant near the year-end of 2014 in lawsuits seeking the Government to comply with FOIA. (Dkt. No. 2 at 11 n.6). In the last year of the Obama administration, "Of the \$36.2 million in legal costs [spent by the Government] fighting [FOIA] lawsuits [in 2016], the Justice Department accounted for \$12 million...."^{3/} Not only did the Agency oppose a 2014 FOIA reform bill, but the Agency has opposed any demand that the Government act with the "presumption of openness" when it came to matters pertaining to FOIA.^{4/} This is not a record of an Agency that complies with the letter, much less the spirit, of FOIA. Because the District Court Judge speaks with ideas, beliefs, and interpretations of the Agency or the Government with a bias that excuses the Agency's pattern

^{3/} See Ted Bridis, *In Obama's final year, U.S. spent \$36 million in FOIA lawsuits*, PBS News Hour (Mar 14, 2017), <https://www.pbs.org/newshour/nation/obamas-final-year-u-s-spent-36-million-foia-lawsuits>.

^{4/} See Jason Leopold, *It Took a FOIA Lawsuit to Uncover How the Obama Administration Killed FOIA Reform*, Vice News (Mar. 9, 2016), <https://news.vice.com/article/it-took-a-foia-lawsuit-to-uncover-how-the-obama-administration-killed-foia-reform>.

and practice of violating FOIA, the District Court Judge must be disqualified from overseeing the proceedings of the District Court case.

3. This is Not the First Time When Parties Have Accused the District Court Judge of Using Extremism against Activists Or Making Prejudicial Statements That Are Disqualifiable

It should be noted that this is not the first time when the District Court Judge has been described to be engaging in some form of misconduct. In one notable instance, the Hon. Judge Koeltl arguably sent the now late activist attorney, Lynne Stewart, to an early grave after the Hon. Judge Koeltl increased her prison sentence at his sole discretion following an unusual request made by the Government.^{5/} The Hon. Judge Koeltl has also faced public criticism over showing bias to one party over another.^{6/} Because Appellant is an activist, the District Court Judge's pattern of using extremism on activists demonstrates that there is a possibility that the District Court Judge will act against Appellant should the Government make an unusual request. Moreover, there is a risk that

^{5/} See John Eligon, *Sentence Is Sharply Increased for Lawyer Convicted of Aiding Terror*, The New York Times (15 July 2010), <http://www.nytimes.com/2010/07/16/nyregion/16stewart.html>.

^{6/} See Daniel Beekman, *Federal judge accused of acting like defense lawyer for Yeshiva University in sexual-abuse suit*, The New York Daily News (Apr. 3, 2014), <http://www.nydailynews.com/new-york/judge-accused-favoring-college-sexual-abuse-case-article-1.1743874>.

the District Court Judge will continue to show bias to one party over another. Because these concerns are based on the District Court Judge's fact-driven, past performance, this Court must act to disqualify the District Court Judge from the District Court case.

4. There is a Remedy for District Court Judges, who are Biased Against Parties : And that is Recusal or Disqualification

Section 455(a) requires a judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "The goal of section 455(a) is to avoid even the appearance of partiality." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988) (quotation marks omitted). "[W]hat matters is not the reality of bias or prejudice but its appearance." *Liteky v. U.S.*, 510 U.S. 540, 548 (1994). As a judge's impartiality might reasonably be questioned, recusal is required "even though no actual partiality exists ... because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible." *Liljeberg*, 486 U.S. at 860 (quotation marks omitted).

The standard to determine whether Section 455(a) requires disqualification of the District Court Judge is "an objective one" that "involves ascertaining whether a reasonable person with knowledge

of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Preston v. U.S.*, 923 F.2d 731, 734 (9th Cir. 1991) (quotation marks omitted). Since analysis must be "fact-driven," it "must be guided, not by comparison to similar situations addressed by prior jurisprudence, but rather by an independent examination of the unique facts and circumstances of the particular claim at issue." *U.S. v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008) (quotation marks omitted). In determining whether Section 455(a) requires disqualification, the Court "must bear in mind that ... outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be," and in "a close case, the balance tips in favor of recusal." *Id.* at 912, 914 (quotation marks omitted).

The facts of this case would plainly lead a reasonable person to conclude that the District Court Judge's impartiality might reasonably be questioned. The District Court Judge has made prejudicial statements. The chief prejudicial statement is missing from, or misrepresented in, the Transcript. The District Court Judge refuses to "correct the record" of the Transcript. Section 455(b) compels disqualification of the District Court Judge, because the District Court

Judge has made statements that demonstrate a personal bias or prejudice concerning a party. 28 U.S.C. § 455(b)(1).

**E. DISQUALIFICATION IS REQUIRED BECAUSE
APPELANT'S APPEAL MAY REASONABLY TRIGGER
COGNIZABLE MISCONDUCT BY THE DISTRICT COURT
JUDGE IN THE FORM OF RETALIATION**

1. The reasonable likelihood of retaliation by Judge Koeltl against Appellant.

Principally troubling to this Court should be how the District Court Judge recinded his promise to allow Appellant to file documents electronically with ECF. Appellant requested the right to file documents via ECF. *See Hr'g Tr. 8:23-9:5, 13 Apr 2017.* The District Court Judge promised to grant Appellant's request. *Supra* at 9:14-5. The District Court Judge later forced Appellant to apply to be able to file records via ECF. (Dkt. No. 29). The District Court Judge later denied Appellant's application to be able to file records via ECF. (Dkt. No. 31). The rejection of Appellant's ECF application was made after Appellant announced his intention to appeal the Order. Such action by the District Court Judge can only be interpreted as retaliation. Since this Court recognises that retaliation is indication of cognizable misconduct, this Court must order the disqualification of the District Court Judge.

2. The compelling interest in public confidence in the judicial system.

Further troubling to this Court should be how the District Court Judge's misconduct demonstrates that His Honour has been reckless with ethics rules applicable to U.S. judges. "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." CODE OF CONDUCT FOR U.S. JUDGES C. 2(A) (2014). Because the District Court Judge has made prejudicial statements, has appeared to have retaliated against Appellant, and has a fact-driven record of acting in extreme with activists, and has demonstrated bias against one party over another, these acts do not instill faith and confidence in the integrity and impartiality of the judicial proceedings taking place in his courtroom. Because Appellant has had to appeal the Order, this Court must act to overturn the Order as it applies to the Request for Reassignment and direct the District Court to assign the case to a new judge.

3. An appellate remedy is required, because Appellant's chances of success in the District Court have been diminished by Judge Koeltl's misconduct.

Appellant prays that this Court will relieve Appellant from the misconduct and retaliation of the District Court Judge. Because Appellant's chances of success in obtaining all of the responsive

records to the FOIA Request rests at the sole discretion of the District Court Judge, the concerns about the District Court Judge's integrity and impartiality mean that this Court must consider that the only remedy available to Appellant is the disqualification of the District Court Judge.

IX. CONCLUSION

Judge Koeltl has, in the past, recused Himself from cases where conflicts of interest were obvious, but His Honour has only done so temporarily.^{7/} Judge Koeltl's temporary respect for impartiality should be unacceptable -- in any case. For the above-argued reasons, we respectfully submit that, should His Honour not volunteer to recuse Himself in the District Court case, that this Court order such recusal and remand Appellant's case to the Chief U.S. District Court Judge for reassignment.

Respectfully submitted,



Louis Flores, Pro Se
Appellant-Appellant

^{7/} See Natalie Rodriguez, *Judge Recused Over Mom's Shares Back On Bench*, Law360 (07 Dec. 2017), <https://www.law360.com/articles/291520/judge-recused-over-mom-s-shares-back-on-bench>.

X. CERTIFICATE OF COMPLIANCE

I, **LOUIS FLORES**, declare under penalty of perjury that :

1/. The Brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B), because, excluding the parts of the documents exempted by Fed. R. App. P. 32(f), this document contains 4 057 words.

2/. These documents comply with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because these documents have been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 in 14 pt. Cambria.

Respectfully submitted,



Louis Flores, *Pro Se*
Appellant-Appellant

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LOUIS FLORES,

Appellant-Appellant,

v.

UNITED STATES DEPARTMENT
OF JUSTICE,

Respondent-Defendant.

SDNY : 17-CV-0036
2d Cir : 17-3621

**CERTIFICATE
OF SERVICE**

I, **LOUIS FLORES**, declare under penalty of perjury that, on **29 JANUARY 2018**, I have served a copy of the attached documents :

- (i). Brief of Appellant Louis Flores ; and
- (ii). Affidavit

by **E-MAIL ONLY** to : **rebecca.tinio@usdoj.gov** on the following party at :

Rebecca Tinio, Esq.
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007



Dated : Jackson Heights, New York
29 January 2018

Louis Flores
34-21 77th Street, Apt. 406
Jackson Heights, New York 11372
Phone : (929) 279-2292
louisflores@louisflores.com